



Fast Track Proposed Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	Primary action: 9VAC5 Chapter 200
Regulation title	National Low Emission Vehicle Program
Action title	Repeal of Chapter 200 National Low Emission Vehicle Program
Date this document prepared	December 9, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The regulation for the National Low Emission Vehicle (NLEV) Program (9VAC5 Chapter 200) was adopted by the board on January 7, 1999 with an effective date of April 14, 1999, to implement an EPA-approved alternative clean fuel fleet standard for mobile sources, the federal NLEV program. 9VAC5 Chapter 200 required mobile source manufacturers to participate in the federal National Low Emission Vehicle Program (40 CFR 86 Subpart R).

On February 10, 2000 the federal NLEV program was superseded by federal Tier 2 standards which were more restrictive than the NLEV program standards (65 FR 6698). Additionally, 9VAC5 Chapter 200 has no requirements that are applicable to new vehicles after the 2006 model year. This amendment repeals 9VAC5 Chapter 200 in its entirety.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On December 2, 2011, the State Air Pollution Control Board:

1. Authorized the department to promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization constituted its repeal of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. Authorized the Department to set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

Federal Requirements

The regulation is not mandated by federal law or regulation; however, the Commonwealth opted to participate in a program which is delineated by federal law.

Section 177 of the federal Clean Air Act states that model year standards for new motor vehicles may be established on a state-by-state basis. The Ozone Transport Commission (OTC), which was established by § 176 A of the Clean Air Act, is responsible for developing a consensus among member states, automobile manufacturers, and the U.S. Environmental Protection Agency (EPA) as to what the standards should be and how to achieve them. Once the standards are established, member states may choose to "opt in" to a framework developed by EPA to achieve the standards. This program is called the National Low Emission Vehicle (NLEV) Program. Program specifics were promulgated by EPA on January 7, 1998 (63 FR 926), under 40 CFR 85, 86, and 87.

Under the NLEV Program, automobile manufacturers have the option of agreeing to comply with tailpipe standards that are more stringent than EPA can mandate prior to model year 2004 through the federal Tier 2 program. Once the manufacturers commit to the program, the standards are enforceable in the same manner as other federal motor vehicle emissions control requirements. These manufacturers have agreed to volunteer these tighter emission standards because EPA and OTC states agreed to certain conditions, including providing manufacturers with regulatory stability and reducing regulatory burdens by harmonizing federal and California motor vehicle emission standards.

In order to participate in the NLEV Program, Virginia committed, through the Office of the Governor and the Secretary of Natural Resources, to meet the requirements of the program as provided in 40 CFR 85, 86 and 87. The Department then developed a regulation (9VAC5 Chapter 200) enacting the requirements of the federal regulation.

Subsequently, the final elements of the federal NLEV program were superseded with the February 10, 2000 promulgation of federal Tier 2 standards, which are more restrictive than the NLEV program standards (65 FR 6698). Additionally, Virginia's 9VAC5 Chapter 200 requirement for manufacturers to participate in the federal NLEV program expired with the model year 2006.

State Requirements

Code of Virginia § 10.1-1300 defines pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property." Excess emissions from mobile sources are harmful to human health and can significantly interfere with the people's enjoyment of life and property.

Code of Virginia § 10.1-1307 A provides that the board may, among other activities, develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth.

Code of Virginia § 10.1-1308 provides that the board shall have the power to promulgate regulations abating, controlling, and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act. It further provides that the regulations shall not promote or encourage any substantial degradation of present air quality in any air basin or region which has an air quality superior to that stipulated in the regulations.

Code of Virginia § 46.2-1179.1 provides that the board may adopt clean alternative fuel fleet standards consistent with the federal Clean Air Act and that adoption by the board of an equivalent approval by EPA (such as the NLEV program) removes the authority for those clean alternative fuel fleet regulations.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the regulation for the National Low Emission Vehicle (NLEV) Program (9VAC5 Chapter 200) was to require mobile source manufacturers to participate in the federal National Low Emission Vehicle Program (Subpart R, 40 CFR 86), which was a transitional program for the federal Tier 2 standards. 9VAC5 Chapter 200 was adopted to meet that federal requirement. Subsequently, the requirements of the federal NLEV program were superseded with the February 10, 2000 promulgation of the federal Tier 2 standards which were more restrictive than the NLEV program standards (65 FR 6698), so there is no longer a federal requirement to have a Virginia NLEV program in place. Additionally, because 9VAC5 Chapter 200 has no requirements that are applicable to new vehicles after the 2006 model year, there is no longer a need for the NLEV program regulation. This purpose of this amendment is to repeal 9VAC5 Chapter 200 National Low Emission Vehicle Program, since it is no longer necessary to protect public health and welfare.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (1) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

9VAC5 Chapter 200 is no longer the most restrictive standard for low emission vehicles and is unusable for determining compliance with federal low emission vehicle standards. Additionally, there is a very limited stakeholder group (2 vehicle manufacturers) that could have been affected by this regulation. With the expiration of the program requirements with the 2006 model year, there are no remaining affected stakeholders that would have any objection to the repeal of this regulation. Therefore, no objections to the repeal of the 9VAC5 Chapter 200 for National Low Emission Vehicle Program are anticipated and the fast-track process is appropriate.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The 9VAC5 Chapter 200 regulation for the National Low Emission Vehicle Program is repealed in its entirety: the definitions, the provisions for participating in the program, and the transition provisions.

Issues

Please identify the issues associated with the proposed regulatory action, including: (1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; (2) the primary advantages and disadvantages to the agency or the Commonwealth; and (3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1. Public: The primary advantage to the public is the removal of unusable state regulatory requirements, which improves the public's ability to understand and comply with federal regulatory requirements. There are no disadvantages to the public.

2. Department: The primary advantage to the department is the removal of regulations that are no longer necessary. There are no disadvantages to the department.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The proposed regulation amendments to repeal 9VAC5 Chapter 200 National Low Emission Vehicle Program are not more restrictive than the applicable legal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Public participation

Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community, and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Department is seeking comments on the costs and benefits of the proposal, the impacts on the regulated community, and impacts of the regulation on farm or forest land preservation. Also, the Department is seeking information on impacts to small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (1) projected reporting, recordkeeping and other administrative costs, (2) probable effect of the proposal on affected small businesses, and (3) description of less intrusive or costly alternative methods of achieving the purpose of the proposal.

Anyone wishing to submit written comments may do so by mail, email, or fax to the staff contact listed below. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week.

All comments requested by this document must be submitted to the agency contact: Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email gary.graham@deq.virginia.gov, fax 804-698-4510).

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: (1) the establishment of less stringent compliance or reporting requirements; (2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) the consolidation or simplification of compliance or reporting requirements; (4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and (5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

An analysis of the proposal was completed for alternative regulatory methods that will minimize the adverse impact on small businesses without compromising health, safety, environmental and economic welfare.

With the repeal of 9VAC5 Chapter 200, the mandatory federal Tier 2 vehicle requirements still meet all of the minimum requirements of the federal Clean Air Act. A failure to repeal any portion of 9VAC5 Chapter 200 could lead to confusion on the part of regulating agencies and vehicle manufacturers and could compromise the effectiveness of the federal requirements in protecting the health and welfare of the public.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures.	It is not expected that the repeal of this regulation will result in any cost to the Department.
Projected cost of the new regulations or changes to existing regulations on localities.	There are no projected costs to localities resulting from the repeal of this regulation.
Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.	Only new vehicle manufacturers were affected by the regulation. Such entities would not be affected by the repeal of this regulation because the most restrictive low emission vehicle requirements are already only the applicable federal regulations.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are only two vehicle manufacturers in Virginia that might have any interest in the repeal of this regulation. No vehicle manufacturer would be affected in any significant way because Virginia’s participation in the NLEV program expired with the 2006 model year.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the	Because the regulation is not in use, there are no projected costs of any kind to any individual, business or other entity resulting from the repeal of this regulation.

<p>proposed regulatory changes or new regulations.</p>	
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Alternatives to the proposed regulation amendments were considered by the Department. The Department determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation. The alternatives considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives being considered, are discussed below.

1. Repeal 9VAC5 Chapter 200, National Low Emission Vehicle Program, and thereby satisfy the provisions of the law and associated regulations and policies. This option was chosen because it makes the state regulations administratively correct.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option was not chosen because that would require additional changes to effectively incorporate changing federal regulation into state regulation and it is not necessary to incorporate the federal regulation for compliance purposes.
3. Take no action to amend the regulations and continue to keep the 9VAC5 Chapter 200 requirements effective. This option was not chosen because it leaves an unusable regulation effective and could cause confusion with the more restrictive federal regulations.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: (1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; (2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; (3) strengthen or erode the marital commitment; and (4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes made to existing regulations between the pre-emergency

regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
200-10		Provides general definitions.	Repeal. This provision is not in use because Virginia's participation in the program has expired and a more restrictive federal program is in place.
200-20		Provides timeframes for Virginia's participation in the NLEV program.	Repeal. This provision is not in use because Virginia's participation in the program has expired and a more restrictive federal program is in place.
200-30		Provides reference for manufacturers that opt out of the Virginia NLEV program.	Repeal. This provision is not in use because Virginia's participation in the program has expired and a more restrictive federal program is in place.

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